IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9981 of 2001
With
SPECIAL CIVIL APPLICATION No. 9983 of 2001
To
SPECIAL CIVIL APPLICATION No. 9984 of 2001
With
SPECIAL CIVIL APPLICATION No. 9986 of 2001

For Approval and Signature:
HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DY.EXECUTIVE ENGINEER GUJARAT WATER SUPPLY & SEWERAGE BOARD - Petitioner(s)
Versus
NOORMOHAMADBHAI IBRAHIM & 1 - Respondent(s)

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Appearance :
MR BHARAT T RAO for Petitioner in all matters.
MR JT TRIVEDI for Respondents in all matters.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 30/08/2007

ORAL JUDGMENT

1. Heard Mr.B.T. Rao, learned counsel for the petitioner and Mr.J.T.Trivedi, learned counsel for the respondents, in all

the matters.

2. The petitioner, Dy.Executive Engineer, Gujarat Water Supply and Sewerage Board, being aggrieved by the award dtd.23/8/2001 passed by the Presiding Officer, Labour Court, Junagadh in Reference Nos.1201 to 1204 of 1990, is before this Court under Article 227 of the Constitution of India, with a submission that the awards made by the learned Labour Court are patently illegal.

3. It is to be noted that after Mr.B.T. Rao, learned counsel was confronted with certain wrong translations, Mr.Rao, learned counsel started saying that the translations was extempore and when the Court said that Mr.Rao, learned counsel was answerable to the Court and the Court would not take all these very lightly, Mr.Rao, learned counsel said that the Court may not hear the matter.

4. A lawyer practicing in the High Court is required to help his client, but a lawyer whosoever he is, whatsoever he is, or howsoever high he is, can not command the Court proceedings. A lawyer cannot say to the Court that because the Court had put certain inconvenient questions

to him, the Court should not hear the matter. A lawyer has no authority to tell the Judge, except on a reasonable ground like personal interest in the matter, that the Judge should not hear the matter. Such a request of Mr.Rao, learned counsel, tantamounts to misconduct. If a lawyer finds that he is in the adverse water and he is not likely to get relief from the Court concerned or from a particular Judge, it would be ill-advocacy to command the Judge that the Judge should not hear the matter. I disapprove the conduct of Mr.B.T. Rao, learned counsel for the petitioner and direct the registry to refer the matter to the State Bar Council of Gujarat for taking appropriate action against Mr.B.T. Rao, learned counsel in view of the misconduct committed by him in the open Court in presence of Ms. Viraj Fojdar, learned junior counsel of Mr.Shalin Mehta, Mr.J.T. Trivedi, learned counsel opposing Mr.B.T. Rao, learned counsel, Ms.Manisha Lavkumar, learned Assistant Government Pleader and Mr.P.C. Master, learned counsel practicing in this Court.

5. After asking the Court not to hear the matter, Mr.B.T. Rao, learned counsel for the petitioner did not argue

anything further. At this stage, when the Court was proceeding to dictate the judgement, again asked Mr.Rao, learned counsel that whether he had completed his argument, Mr.Rao said that as the Court was holding him responsible for the wrong translations, he stopped arguing the matter, though, in fact, he wanted to argue.

(i) Mr.Rao, learned counsel for the petitioner also said that he obtained the translations from outside agency and therefore, he may be exempted.

Once the Court directs a party or counsel to provide true English translations, then, true English translations means in fact, true English translations. A lawyer cannot say that he got it done from outside agency or the translation was 'extempore' (the term used by Mr.B.T. Rao, learned counsel for the petitioner), the party would not be answerable to the Court. It is to be noted that in earlier paragraphs also, the translation contained mistakes at material places.

Even otherwise a counsel is not entitled to say to the Court that the Court is not entitled to demand true

English translations and if the Court has done so, the Court should not hear the matter.

(ii) Mr.B.T. Rao, learned counsel for the petitioner says that he is not choosing forum and even if the matter is dismissed, he is least concerned.

So far as the statement publicly made by Mr.B.T. Rao, learned counsel for the petitioner is concerned, would speak for itself. Whether he chooses or selects forum or not is immaterial but the manner in which he pelted statement and slapped his authority on the face of the court by saying that “then the court should not hear the matter” would not be palatable.

(iii) Mr.Rao, learned counsel for the petitioner says that he never wanted to make attack on the dignity of the Court.

It is to be noted that the language in which and gesture with which such statement was thrown upon the face of the Court, would be sufficient to presume that what was the intention of Mr.B.T. Rao, learned counsel.

(iv) Mr.Rao, learned counsel for the petitioner says that he wanted to read from Gujarati award and the Court said that the Court cannot not read Gujarati. According to Mr.Rao, the Judge can read Gujarati and it had read Gujarati in some earlier matters.

It is to be noted that in most of the cases if the orders are of few pages, with assistance of the lawyers, I read the documents, but in most of the cases, even today, I direct the parties to provide true English translations so that I feel at home. Even in these cases, when I directed the petitioner to provide true English Translations, Mr.Rao did not say that the Court can read Gujarati, therefore, translations are not required.

(v) Mr.Rao, learned counsel said that as he was discharging his duty, the Court may draw proceedings against him. He also said that he is the person who does not believe in forum bargaining and Court may do whatever the Court wants, because in his personal opinion, the Court is trying to impress the lawyers.

I am unable to understand the meaning of it. Why should a Judge impress a lawyer. If the lawyers are satisfied with the conduct and work of a Judge, it in itself is a reward to a Judge.

6. What has now been recorded adds insult to the injuries. So far as the question of drawing contempt proceedings against Mr.B.T. Rao, learned counsel are concerned, I do not think that the contempt proceedings would be proper and appropriate action against him. I would require Bar Council of State Gujarat to draw appropriate proceedings.

7. At the very inception, I asked Mr.B.T. Rao, learned counsel for the petitioner that whether a part-time employee would be a workman or not..... Before the Court could complete the sentence, Mr.B.T. Rao, again paunced upon the Court and said that he wants the Court not to hear the matter and as he wants to challenge this order before the Division Bench or a higher forum, the Court should adjourn the matter. I am really shocked to hear this. A counsel trying to threaten a Court, trying to intimidate the Court, trying to command and

condemn the Court / Judge is a novel experience to me. Does this conduct go with the statement of Mr.Rao as recorded in paragraph No.5(ii).

8. At the very inception, I asked Mr.B.T. Rao, learned counsel that whether a part time employee would be taken to be a workman or not, Mr.Rao, submitted that in his humble opinion, a part-timer would also fall within the definition of a workman. Later-on realising that he has committed a blunder in making such statement, to wriggle out of the same, he said that part-timer would not be a workman.

9. In the present matter, the workmen had worked as a part-timer that too for more than 240 days. Plea of the workmen was that they were unceremoniously removed from services, while the defence of the establishment was that the workmen had abandoned the work. After recording the evidence and hearing the parties, the Court found that the plea of abandonment was not justified. The Court even otherwise held that in case like present, if the workmen had abandoned the work, then, some notices were required to be issued or some inquiry was required

to be made. The Court found that the defence raised by the establishment was patently illegal. Once the Court holds that the defence raised by the establishment was wrong and the plea of the workmen was justified, then, reinstatement would be a rule. In these matters, the court below while directing reinstatement has also directed payment of 25% of the back wages. In the English translations, the words “with the benefit of continuity of service” are not shown, which according to Mr.B.T. Rao are to be found in the original Gujarati version.

10.Mr.Trivedi, learned counsel for the respondents admits that the court below has granted benefit of continuity of service.

11.On being asked that how could the court below give benefit of continuity of service, Mr.Trivedi, said that the workmen had worked for more than five years and that there is no evidence on the record to show or suggest that they were part-timer.

12.Mr.Rao, learned counsel for the petitioner, however,

submitted that from the pleadings of the petitioner and the Muster-roll produced by the petitioner, it would clearly appear that the respondents were engaged as part-timer and they were being paid Rs.332=00 per month, which was payable to a part timer, who was working for one hour a day for the whole month.

13. Taking into consideration the totality of the circumstances and pleadings of the parties, I must hold that each of the workman was working as a part-timer and as a part-timer is not in the regular establishment, the workmen are not entitled to the benefits of continuity of service.

14. The Apex Court time and again has said that in cases of ad-hoc appointees, fill in the gap arrangement, they would only be entitled to be included in the list maintained by the industry / establishment and nothing beyond that. The position of a part-timer would be no better.

15. In these matters, the court below was unjustified in giving benefit of continuity of service. The court below

though was justified in directing reinstatement, meaning thereby, inclusion of the name of each of the workman in the list maintained by the present petitioner and in awarding 25% back wages, erred in giving benefit of continuity of service. On the merits I refuse to interfere, but, however, I would set aside the directions issued by the Labour Court to the extent that the benefit of continuity of service be given to the workmen.

16. With the above modification in the awards, on the merits, the petition is dismissed. Interim relief, if any, is vacated. No costs.

17. Office shall immediately send copy of this Judgement to the State Bar Council of Gujarat and Bar Council of India.

(R.S. GARG, J.)

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